

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PETER C. TAYLOR,

Defendant-Appellant.

UNPUBLISHED

April 17, 2003

No. 228039

Wayne Circuit Court

LC No. 99-006381

Before: Meter, P.J., and Saad and R.B. Burns*, JJ.

PER CURIAM.

The jury convicted defendant of second-degree murder, MCL 750.317, two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of twenty-three to fifty years for the murder conviction, and one to four years each for the felonious assault convictions, to be served consecutive to a two-year term for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Defendant argues that the evidence was insufficient to support his convictions of felonious assault. This Court evaluates a sufficiency of the evidence claim de novo by reviewing the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). Defendant contends that the testimony against him was biased. This Court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Here, there was eyewitness testimony that defendant shot decedent three times and then fired at each of the two alleged assault victims. There was also testimony that one of the assault victims had bullet fragments in her arm. Additionally, there was evidence that nine rounds remained in defendant's gun, which held fourteen rounds, and, accordingly, that five shots could have been fired. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that defendant feloniously assaulted the two victims. MCL 750.82; *Hampton*, *supra*.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Defendant also says that the trial court erred by refusing the jury's request during deliberations for a transcript of testimony. Because defendant did not preserve this issue with an appropriate objection to the trial court's response to the jury, we review this issue for plain error affecting defendant's substantial rights. *People v Carter*, 462 Mich 206, 218; 612 NW2d 144 (2000); *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Although the trial court advised the jurors of the difficulty of providing a transcript and asked them to return to deliberations, it did not foreclose the possibility of providing transcripts at a later time, if necessary.¹ We find no plain error in the trial court's response. MCR 6.414(H); *People v Howe*, 392 Mich 670, 677; 221 NW2d 350 (1974).

In his statement of the second issue, defendant also asserts that the trial court erred by denying a jury request to ask questions of witnesses, but defendant does not address this issue in his brief. Therefore, defendant has abandoned this issue. *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001).

Finally, defendant contends that his trial lawyer was ineffective because he failed to secure the presence of Ms. Hayes, an alleged res gestae witness, who lived in Maine at the time of trial. Because defendant did not request a *Ginther*² hearing, this Court's review is limited to mistakes apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). To establish ineffective assistance of counsel, defendant must show that counsel made a serious error that prejudiced the defense and deprived defendant of a fair trial. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997).

Questions regarding which witnesses to call are generally matters of trial strategy and this Court will not substitute its judgment for that of trial counsel in matters of trial strategy. *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999). The record indicates that defense counsel subpoenaed Ms. Hayes in Maine and that she acknowledged receiving the summons. The prosecutor argued and the trial court agreed that Ms. Hayes was not a res gestae witness, because she was "in a building across a way" at the time of the shootings. The question whether she would testify was discussed at trial and defendant agreed on the record that he and his attorney had "*concluded that they would not call her.*" Counsel later explained on the record some of the strategic concerns in deciding which witnesses to call. Defendant has not overcome the presumption of sound trial strategy, or shown that the failure to call Ms. Hayes detrimentally affected the result of the trial. *People v Fike*, 228 Mich App 178, 181; 577 NW2d 903 (1998).

Affirmed.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Robert B. Burns

¹ Defendant cites transcript pages 3-8 of the February 3, 2000, trial transcript as support for his claim that the trial court told the jury, *inter alia*, that it "cannot make it [the transcript] available to you." Our review of the cited transcript pages reveals that they do not contain the remarks attributed to the court by defendant.

² *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).